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 8

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA — WESTERN DIVISION
 11

12 RPB SA, a company incorporated under
 the laws of Argentina,
 13

14 Plaintiff,

15 vs.

16 HYL A, INC., a Delaware corporation;
 FLIPSWAP SERVICES, LLC, a
 17 Delaware limited liability company;
 USA DACHENG GROUP
 18 COMPANY, LTD., a California
 corporation; UNINET GLOBAL, INC.,
 19 a California corporation; GALLERIA
 WIRELESS WORLD & GARMENTS,
 20 INC. A Texas corporation; VESEA
 INTERNATIONAL INC., a California
 21 corporation; DAWAY SEAFOOD
 LLC, a California limited liability
 22 company, TAP WORLDWIDE, LLC a
 Delaware LLC doing business as
 23 TRANSAMERICAN AUTO PARTS;
 CELLPOINT CORPORATION, a
 24 California corporation; YANSHAN YE,
 an individual; HAN YING ZHANG, an
 25 individual; KATHIE YAO, an
 individual; CHANGSHENG GUO, an
 26 individual; CITIBANK, a national
 association; BANK OF AMERICA, a
 27 national association; EAST WEST
 BANK, a California corporation;
 28 WESTERN ALLIANCE BANK, an

Case No. 2:20-cv-04105 JAK(SKx)
 Hon. John A. Kronstadt
 Ctrm.: 10B (First St.)

**ORDER GRANTING STIPULATED
 PROTECTIVE ORDER**

**[Discovery Document: Referred to
 Magistrate Judge Steve Kim]**

Action Filed: May 5, 2020
 Trial Date: none set

1 Arizona Corporation; JPMORGAN
2 CHASE BANK, a national association;
3 CATHAY BANK, a California
4 corporation; WELLS FARGO BANK, a
5 national association;
6 COMMERCEWEST BANK, a
7 California corporation; and DOES 1-20
8 inclusive,

Defendants.

9 After considering the Joint Stipulation and Petition for Protective Order filed
10 by the parties hereto and GOOD CAUSE APPEARING THEREFOR,

11 **IT IS HEREBY ORDERED:**

12 1. A. Purposes and Limitations.

13 Discovery in this action is likely to involve production of confidential,
14 proprietary, or private information for which special protection from public
15 disclosure and from use for any purpose other than prosecuting this litigation may
16 be warranted. Accordingly, plaintiff RPB SA (“Plaintiff”) and defendant Bank of
17 America, N.A. (“BANA”) (hereinafter, the “parties”) hereby stipulate to and petition
18 the Court to enter the following Stipulated Protective Order. The parties
19 acknowledge that this Order does not confer blanket protections on all disclosures or
20 responses to discovery and that the protection it affords from public disclosure and
21 use extends only to the limited information or items that are entitled to confidential
22 treatment under the applicable legal principles. The parties further acknowledge, as
23 set forth in Section 12.3, below under seal; Civil Local Rule 79-5 sets forth the
24 procedures that must be followed and the standards that will be applied when a party
25 seeks permission from the court to file material under seal.

26 B. Good Cause Statement.

27 This action may involve non-public personal and/or financial information of
28 parties and third parties for which defendant BANA believes special protection from

1 public disclosure and from use for any purpose other than prosecution of this action
2 is warranted. It may also involve confidential and proprietary materials and
3 information consist of, among other things, BANA's confidential business or
4 financial information, information regarding BANA's confidential business
5 practices, or other commercial information (including information implicating
6 privacy rights of third parties)that is generally unavailable to the public, or which
7 may be privileged or otherwise protected from disclosure under state or federal
8 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
9 flow of information, to facilitate the prompt resolution of disputes over
10 confidentiality of discovery materials, to adequately protect information the parties
11 are entitled to keep confidential, to ensure that the parties are permitted reasonable
12 necessary uses of such material in preparation for and in the conduct of trial, to
13 address their handling at the end of the litigation, and serve the ends of justice, a
14 protective order for such information is justified in this matter. It is the intent of the
15 parties that information will not be designated as confidential for tactical reasons
16 and that nothing be so designated without a good faith belief that it has been
17 maintained in a confidential, non-public manner, and there is good cause why it
18 should not be part of the public record of this case.

19 As alleged by Plaintiff, the underlying triggering action involves the theft of
20 more than \$7,000,000 (in which defendant Bank of America, N.A. is not alleged to
21 be involved) from a bank in Hong Kong, which thereafter resulted in a substantial
22 portion of the stolen funds being transferred to other jurisdictions around the world.
23 Plaintiff believes it may need to utilize information, including documents, obtained
24 from defendant BANA for the purposes of existing legal proceedings or legal
25 proceedings that may be commenced in the future relating to the same alleged theft.
26 Should Plaintiff reach this view, it shall be entitled to apply *ex parte* to the Court for
27 permission to do so. Defendant BANA shall be provided notice of any such *ex*
28 *parte application*. To ensure clarity, this language is intended to supplement, and in

1 no way abridge, the language in section 12.1.

2 2. DEFINITIONS

3 2.1 Action: this pending federal law suit, *RPB SA v. HYL A INC., et al.*,
4 Case No. 2:20-cv-04105 JAK(SKx).

5 2.2 Challenging Party: a Party or Non-Party that challenges the designation
6 of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for
9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
10 the Good Cause Statement.

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
12 their support staff).

13 2.5 Designating Party: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

16 2.6 Disclosure or Discovery Material: all items or information, regardless
17 of the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced or
19 generated in disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
22 an expert witness or as a consultant in this Action.

23 2.8 House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

28 2.10 Outside Counsel of Record: attorneys who are not employees of a party

1 to this Action but are retained to represent or advise a party to this Action and have
2 appeared in this Action on behalf of that party or are affiliated with a law firm that
3 has appeared on behalf of that party, including support staff.

4 2.11 Party: any party to this Action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel of Record (and their
6 support staffs).

7 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this Action.

9 2.13 Professional Vendors: persons or entities that provide litigation support
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
12 and their employees and subcontractors.

13 2.14 Protected Material: any Disclosure or Discovery Material that is
14 designated as “CONFIDENTIAL.”

15 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
16 from a Producing Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or
21 compilations of Protected Material; and (3) any testimony, conversations, or
22 presentations by Parties or their Counsel that might reveal Protected Material.

23 Any use of Protected Material at trial shall be governed by the orders of the
24 trial judge. This Order does not govern the use of Protected Material at trial.

25 4. DURATION

26 Once a case proceeds to trial, all of the court-filed information to be
27 introduced that was previously designated as confidential or maintained pursuant to
28 this protective order becomes public and will be presumptively available to all

1 members of the public, including the press, unless compelling reasons supported by
2 specific factual findings to proceed otherwise are made to the trial judge in advance
3 of the trial. See *Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1180-81
4 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents
5 produced in discovery from “compelling reasons” standard when merits-related
6 documents are part of court record). Accordingly, the terms of this protective order
7 do not extend beyond the commencement of the trial.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.

10 Each Party or Non-Party that designates information or items for protection under
11 this Order must take care to limit any such designation to specific material that
12 qualifies under the appropriate standards. The Designating Party must designate for
13 protection only those parts of material, documents, items, or oral or written
14 communications that qualify so that other portions of the material, documents,
15 items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations
18 that are shown to be clearly unjustified or that have been made for an improper
19 purpose (e.g., to unnecessarily encumber the case development process or to impose
20 unnecessary expenses and burdens on other parties) may expose the Designating
21 Party to sanctions.

22 If it comes to a Designating Party’s attention that information or items that it
23 designated for protection do not qualify for protection, that Designating Party must
24 promptly notify all other Parties that it is withdrawing the inapplicable designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
28 under this Order must be clearly so designated before the material is disclosed or

1 produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic documents,
4 but excluding transcripts of depositions or other pretrial or trial proceedings), that
5 the Producing Party affix, at a minimum, the legend “CONFIDENTIAL”
6 (hereinafter “CONFIDENTIAL legend”), to each page that contains protected
7 material. If only a portion or portions of the material on a page qualifies for
8 protection, the Producing Party also must clearly identify the protected portion(s)
9 (e.g., by making appropriate markings in the margins).

10 A Party or Non-Party that makes original documents available for inspection
11 need not designate them for protection until after the inspecting Party has indicated
12 which documents it would like copied and produced. During the inspection and
13 before the designation, all of the material made available for inspection shall be
14 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
15 documents it wants copied and produced, the Producing Party must determine which
16 documents, or portions thereof, qualify for protection under this Order. Then, before
17 producing the specified documents, the Producing Party must affix the
18 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
19 portion or portions of the material on a page qualifies for protection, the Producing
20 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
21 markings in the margins).

22 (b) for testimony given in depositions that the Designating Party identify the
23 Disclosure or Discovery Material on the record, before the close of the deposition.

24 (c) for information produced in some form other than documentary and for
25 any other tangible items, that the Producing Party affix in a prominent place on the
26 exterior of the container or containers in which the information is stored the legend
27 “CONFIDENTIAL.” If only a portion or portions of the information warrants
28

1 protection, the Producing Party, to the extent practicable, shall identify the protected
2 portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive
5 the Designating Party's right to secure protection under this Order for such material.
6 Upon timely correction of a designation, the Receiving Party must make reasonable
7 efforts to assure that the material is treated in accordance with the provisions of this
8 Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time that is consistent with the Court's
12 Scheduling Order.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
14 resolution process under Local Rule 37-1, et seq.

15 6.3 The burden of persuasion in any such challenge proceeding shall be on
16 the Designating Party. Frivolous challenges, and those made for an improper purpose
17 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
18 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
19 withdrawn the confidentiality designation, all parties shall continue to afford the
20 material in question the level of protection to which it is entitled under the Producing
21 Party's designation until the Court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this Action
25 only for prosecuting, defending, or attempting to settle this Action. Such Protected
26 Material may be disclosed only to the categories of persons and under the conditions
27 described in this Order. When the Action has been terminated, a Receiving Party must
28 comply with the provisions of section 13 below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the Court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
7 only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action,
9 as well as employees of said Outside Counsel of Record to whom it is reasonably
10 necessary to disclose the information for this Action;

11 (b) the officers, directors, and employees (including House Counsel)
12 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) the Court and its personnel;

17 (e) court reporters and their staff;

18 (f) professional jury or trial consultants, mock jurors, and
19 Professional Vendors to whom disclosure is reasonably necessary for this Action
20 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
21 A);

22 (g) the author or recipient of a document containing the information
23 or a custodian or other person who otherwise possessed or knew the information;

24 (h) during their depositions, witnesses, and attorneys for witnesses,
25 in the Action to whom disclosure is reasonably necessary provided: (1) the deposing
26 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
27 they will not be permitted to keep any confidential information unless they sign the
28 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise

1 agreed by the Designating Party or ordered by the Court. Pages of transcribed
2 deposition testimony or exhibits to depositions that reveal Protected Material may
3 be separately bound by the court reporter and may not be disclosed to anyone except
4 as permitted under this Stipulated Protective Order; and

5 (i) any mediator or settlement officer, and their supporting
6 personnel, mutually agreed upon by any of the parties engaged in settlement
7 discussions.

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
9 IN OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this Action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification
14 shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order
16 to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is subject to this Protective Order. Such notification shall include
18 a copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be
20 pursued by the Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with
22 the subpoena or court order shall not produce any information designated in this
23 action as “CONFIDENTIAL” before a determination by the court from which the
24 subpoena or order issued, unless the Party has obtained the Designating Party’s
25 permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that court of its confidential material and nothing in these provisions
27 should be construed as authorizing or encouraging a Receiving Party in this Action
28 to disobey a lawful directive from another court.

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party’s confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party’s
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-
13 Party that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this Court within
21 14 days of receiving the notice and accompanying information, the Receiving Party
22 may produce the Non-Party’s confidential information responsive to the discovery
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
24 not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the Court.
26 Absent a court order to the contrary, the Non-Party shall bear the burden and
27 expense of seeking protection in this Court of its Protected Material.

28 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
2 Protected Material or material that is subject to a claim of privilege as designated in
3 this Stipulation to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
6 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
7 persons to whom unauthorized disclosures were made of all the terms of this Order,
8 and (d) request such person or persons to execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection
14 outlined in this Stipulation above, the obligations of the Receiving Parties are those
15 set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Additionally, if the
16 Receiving Party disclosed the specified information before being notified of its
17 inadvertent production, it must take reasonable steps to retrieve it. The Receiving
18 Party shall also promptly give the Producing Party notice of any destruction of
19 inadvertently produced records pursuant hereto. This provision is not intended to
20 modify whatever procedure may be established in an e-discovery order that provides
21 for production without prior privilege review. Pursuant to Federal Rule of Evidence
22 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
23 of a communication or information covered by the attorney-client privilege or work
24 product protection, the parties may incorporate their agreement in the stipulated
25 protective order submitted to the Court.

26 The inadvertent production of Confidential Information during discovery in
27 this proceeding without a “CONFIDENTIAL” designation shall be without
28 prejudice to any claim that such item(s) constitutes Confidential Information or is

1 otherwise protected by law or this agreement, and subject to the following
2 provisions, no Party shall be deemed to have waived any rights by such inadvertent
3 production.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order, no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in this
10 Stipulated Protective Order. Similarly, no Party waives any right to object on any
11 ground to use in evidence of any of the material covered by this Protective Order.

12 12.3 Filing Protected Material. A Party that seeks to file under seal any
13 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
14 only be filed under seal pursuant to a court order authorizing the sealing of the
15 specific Protected Material at issue; good cause must be shown in the request to file
16 under seal. If a Party's request to file Protected Material under seal is denied by the
17 Court, then the Receiving Party may file the information in the public record unless
18 otherwise instructed by the Court.

19 13. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in paragraph
21 4, each Receiving Party must return all Protected Material to the Producing Party or
22 destroy such material. As used in this subdivision, "all Protected Material" includes
23 all copies, abstracts, compilations, summaries, and any other format reproducing or
24 capturing any of the Protected Material. Whether the Protected Material is returned or
25 destroyed, the Receiving Party must submit a written certification to the Producing
26 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
27 deadline that (1) identifies (by category, where appropriate) all the Protected Material
28 that was returned or destroyed and (2) affirms that the Receiving Party has not

1 retained any copies, abstracts, compilations, summaries or any other format
2 reproducing or capturing any of the Protected Material. Notwithstanding this
3 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
4 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and
6 expert work product, even if such materials contain Protected Material. Any such
7 archival copies that contain or constitute Protected Material remain subject to this
8 Protective Order as set forth in Section 4 (DURATION).

9 14. Any violation of this Order may be punished by any and all appropriate
10 measures including, without limitation, contempt proceedings and/or monetary
11 sanctions.

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13 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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Dated: June 15, 2020

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HONORABLE STEVE KIM
United States Magistrate Judge

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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3
4 I, _____ [print or type full name],
5 of _____ [print or type full address],
6 declare under penalty of perjury that I have read in its entirety and understand the
7 Stipulated Protective Order that was issued by the United States District Court for
8 the Central District of California on [date], in the case of *RPB SA v. vs. HYL A,*
9 *INC., et al.*, United States District Court Case No. 2:20-cv-04105 JAK(SKx). I
10 agree to comply with and to be bound by all the terms of this Stipulated Protective
11 Order and I understand and acknowledge that failure to so comply could expose me
12 to sanctions and punishment in the nature of contempt. I solemnly promise that I
13 will not disclose in any manner any information or item that is subject to this
14 Stipulated Protective Order to any person or entity except in strict compliance with
15 the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Stipulated Protective Order, even if such enforcement proceedings occur
18 after termination of this action. I hereby appoint _____ [print
19 or type full name] of _____ [print or type full
20 address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this
22 Stipulated Protective Order.

23 Date: _____

24 City and State where signed: _____

25 Printed Name: _____

26 Signature: _____
27
28